IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.806 OF 2005

WITH

CIVIL APPLICATION NO.943 OF 2005

Shri Ajay Champalal Gugale & Anr. ...Appellants

Versus

Shri.Santosh Champalal Gugale & Ors....Respondents

.....

Mr.G.S.Godbole with Mr.Umesh Mankapure for Appellants.

Mr.A.M.Kulkarni for Respondent No.1.

Mr.Bhushan Walimbe for Respondents 3 and 4.

Mr.Surel Shah for Respondent No.5.

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CORAM: A.M.KHANWILKAR, J.

MARCH 29, 2006.

P.C.

1. After hearing the Counsel for some time, as I indicated my mind, Counsel for the Appellants suggested that the Appellants will not press this Appeal, if the Respondent Bank were to show

indulgence of proceeding against the properties of Defendant No.1, which are subject matter of the mortgage deed dated 5th October 1993 in the first instance and if the same were found to be inadequate, to proceed against the properties in which the Appellants herein have interest and joint share. Counsel for the Respondent Bank submits that the Bank has no objection in proceeding in that manner.

2. Accordingly, on the above understanding, this Appeal is not pressed. The same is disposed of.

3. All questions in the pending Suit are kept open to be decided on its own merits in accordance with law.

4. In view of the above order, companion Civil Application also stands disposed of.

A.M.KHANWILKAR, J.